

Competition Commission of India amends combination Regulations.

The Competition Commission of India (CCI) has recently notified the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2011 and thereby amending the provisions of the Competition Commission of India (Procedure in regard to the transaction of business relating to combination) Regulation, 2011 (Combination Regulations or Regulations).

The Combination Regulations have been in force with effect from June 1, 2011 and based on the past experience of last nine months, the Commission has brought in these amendments making an effort to remove ambiguities, to simplify the procedures and to liberalize notice requirements.

The key provisions of the amendments are discussed hereunder:

1. Filing of Forms:

- a. Amendments have been made in Regulation 5(2) and 5(3) of the Combination Regulations thereby bring more clarity with respect to filing of Form I (brief form) or Form II (descriptive form).
- b. As per the amendment made in Regulation 5(2), the Commission has provided that ordinarily Form I would be filed and has removed/deleted the inclusive instances as provided earlier under the regulation, in which the Form I would have been filed.
- c. Further to bring more clarity, the Commission has under Regulation 5(3), introduced two inclusive instances in which Form II may preferably be filed. The instances so introduced are as followings:
 - i. The parties to the combination are engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of similar or identical or substitutable services and the combined market share of the parties to the combination after such combination is more than fifteen percent (15%) in the relevant market;
 - ii. The parties to the combination are engaged at different stages or levels of the production chain in different markets, in respect of production, supply,

distribution, storage, sale or trade in goods or provision of services, and their individual or combined market share is more than twenty five percent (25%) in the relevant market.

Thus the choice of filing of Forms still vest with the parties to the combination and the commission has not provided specific instances wherein form I is to be filed and instances wherein form II is to be filed. Though with intent to bring in more clarity and considering the fact that filing of Form II is much more time consuming and costlier, the Commission has now indicated the inclusive instances wherein Form II may preferably be filed. Further the instances as indicated earlier wherein Form I may be filed have also been removed to avoid any ambiguity.

Therefore now as per the amended provisions, parties may prefer to file Form I in all cases other than only those falling under the limited inclusive criteria of Regulation 5(3) in which Form II is to be filed. The Commission, considering the fact of the case, if required may ask the parties to further file Form II. The fees filed with Form I would be adjusted with fees for Form II.

2. **Time period for prime facie opinion of CCI:**

- a. In cases wherein the parties are required by the Commission to file Form II after the filing of Form I, the period of 30 days as allocated to the Commission to form its prima facie opinion has been amended to reckon afresh from the date of receipt of notice in Form II as against the earlier requirement of excluding the time of filing of Form II from the total time.

3. **Value of assets and turnover:**

- a. A further clarity has been brought with respect to the valuation of business for the purpose of the combinations by insertion of the new sub-regulation 5(9).
- b. As per this newly inserted Regulation 5(9), Where in a series of inter related individual transactions, assets are transferred to an enterprise to affect any combinations between that transferee enterprise and other enterprise or person under section 5, the value of the assets of the transferor enterprise are also to be calculated with the value of the assets of the transferee enterprise.

4. **Acquisition by financial institutions, Banks, Venture funds etc.:**

- a. As per section 6(5) of the Competition Act 2002 (Act) read with Regulation 6(1), in case of acquisitions by PFIs, FIIs, banks or VCFs, the notice is to be filed by these acquirers in Form III, within seven days of acquisition.
- b. Now, as per the amendment in Regulation 6(1), it is further required to file a certified copy of the loan or the investment agreement subsequent to which the acquisition is taking place, along with the Form III.
- c. Further by insertion of Regulation 6(3), the Commission has been provided with the power of condonation of delay in respect of filing Form III at its discretion.

5. **Authorization to Company Secretaries for signing of Forms filed by the Companies:**

- a. Vide amendments made in the existing provisions of Regulation 9(1) and 9(3), in cases of acquisitions as well as mergers and amalgamations, now Company Secretaries duly authorized by the Board of Directors, are further authorized to sign Form I or Form II as the case may be.

6. **Filing Fees of Form I and Form II:**

- a. The filing fees for Form I & Form II have been increased substantially by amending the provisions of Regulation 11.
- b. In case of Form I, filing fees has been enhanced from the existing Rs.50,000 to Rs.10,00,000
- c. In case of Form II, filing fees has been enhanced from the existing Rs.10,00,000 to Rs.40,00,000.

7. **Filing of Summary of Combination along with respective Forms:**

- a. As per newly inserted Regulation 13 (1A), the Companies would be further required to file a summary note giving brief note on the proposed combination to the Commission. The summary note shall be filed in 9 copies along with electronic form and would be of atleast 2000 words and not containing any confidential information.

- b. Other particulars to be comprised in the note shall be as following:
- i. The products and services of the parties to the combination;
 - ii. Values of assets and turnover of the parties;
 - iii. Relevant markets of the parties;
 - iv. Details of agreement & board resolution effecting the combination;
 - v. Nature and purpose of combination;
 - vi. Likely impact of combination on competition in relevant market.

8. **Exemption from filing of notice to the commission:**

- a. The Commission has further made amendments in Schedule I, thereby liberalizing and expanding the ambit of exemptions for filing of notice to the CCI in cases of proposed combinations.
- b. Under clause 1 to the schedule, now in cases of Acquisitions of shares or voting rights (under section 5 (a)(i) and (ii) of the act), the commission has increased the exemption limits from more than 15% of total shares or Voting rights to 25%. Thus, now no notice is required to be given to the commission for the Acquisitions of shares or voting right upto 24.99%.
- c. Under clause 6, further acquisition of shares pursuant to buy back has also been exempted, subject to the condition that there is no acquisition of control.
- d. Further under clause 6 only, exemption in case of subscription to Right Issue is modified and now the Right Issues are exempted subject to the condition that there is no acquisition of control as against the earlier condition to subscribe to the extent of entitled proportion.
- e. Definition of word “Group” is removed from under Clause 8, and now the definition is to be taken as provided under the Act only.

- f. By insertion of new clause 8(A), now merger and amalgamation between Holding and Wholly owned Subsidiaries of same group enterprises and merger and amalgamation between Wholly owned Subsidiaries of same group enterprises are totally exempted from filing of notice to the Commission

Relaxing the acquisition limits of shares and voting rights upto 24.99% is a welcome step towards synchronizing the provisions of the Regulations with that of SEBI (Substantial Acquisition of Shares and Takeover) Regulations 2011. Under SEBI Regulations also, the acquisition upto 24.99% is exempted from requirement of open offer.

Introduction of buy-back without acquisition of control as exempted category is again comforting for the enterprises since there being no active acquisition by the parties.

The most important awaited amendment had been exempting the mergers and amalgamations amongst Holding and Wholly owned Subsidiaries and amongst Wholly owned Subsidiaries of the same groups. This move would facilitate consolidations amongst the groups without the statutory hassles. Though what is important to consider is that only the transactions involving Wholly owned Subsidiaries are exempted and not all subsidiaries or group mergers, which would still be required to file notice to the Commission.

9. **Modification in Schedule II (Form I):**

- a. With respect to the changes made in the Regulations, suitable modifications have also been made in the format of Form I to be filed.